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In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-987

R. W. JONES, SR., et al.,
Petitioners,

vs.

CHARLES T. WOLF, et al.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

BRIEF FOR RESPONDENTS IN OPPOSITION

FRANK C. JONES
2500 Trust Company Tower
Atlanta, Georgia 30303

WALLACE MILLER, JR.
W. WARREN PLOWDEN, JR.
500 First National Bank Building
Macon, Georgia 31201

EDWARD S. SELL, JR.
1414 Georgia Power Building
P. O. Box 1014
Macon, Georgia 31201
Attorneys for Respondents

E. L. MENDENHALL, INC., 926 Cherry Street, Kansas City, Mo. 64106, (816) 421-3030

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BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of this Court is reported at ..... U.S. ....., 61 L.Ed. 2d 775, 99 S.Ct. 3020 (1979) and is reprinted in the Appendix to the Petition for a Writ of Certiorari at 23a-49a. The opinion of the Supreme Court

of Georgia from which this writ is taken is reported at 244 Ga. 388, 260 S.E.2d 84 (1979) and is reprinted at 50a-52a. The previous opinion of the Supreme Court of Georgia is reported at 241 Ga. 208, 243 S.E.2d 860 (1978) and is reprinted at 11a-16a. The unreported opinion of the Superior Court of Bibb County, Georgia is reprinted at 1a-10a.

JURISDICTION

The Supreme Court of Georgia entered judgment in this action on September 27, 1979 and petitioners failed to file a motion for a rehearing. Jurisdiction rests on 28 U.S.C. §1257(3).

QUESTION PRESENTED

Whether the Supreme Court of Georgia has adopted a presumptive rule of majority representation which can be overcome under the neutral principles approach, in accordance with the mandate of this Court.

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST., Amend. I:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof * * *.

U.S. CONST., Amend. XIV, Sec. 1:

> * * * nor shall any State deprive any person of life, liberty, or property, without due process of law * * *.

STATEMENT OF THE CASE

For a third time, petitioners seek this Court's review of a dispute concerning the use and control of real estate owned by Vineville Presbyterian Church [hereinafter VPC] in Macon, Georgia. In its prior consideration of this action, this Court rejected petitioners' sweeping contention that civil courts are always required to defer to the ruling of a tribunal of a hierarchical church in a controversy between two factions of a local church. Rather, this Court held that a state is constitutionally entitled to adopt a presumptive rule of majority representation, which can be overcome under a neutral principles of law analysis involving consideration of deeds, state statutes governing the holding of church property, the local church's charter, and the general church's constitution. These are the identical neutral principles previously adopted by the Supreme Court of Georgia in *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976).

Although the Court expressly recognized that the PCUS *Book of Church Order* "failed to reveal any language of trust in favor of the general church", App. 28a, the Court expressed uncertainty over the method employed by the Georgia courts to determine which of two factions was entitled to the possession and control of the local church property. Accordingly, this Court remanded the action to the Georgia Supreme Court with instructions to articulate the basis of its decision. In this connection, this Court stated:

> "If in fact Georgia has adopted a presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be

determined by some other means, we think this would be consistent with both the neutral principles analysis and the First Amendment. Majority rule is generally employed in the governance of religious societies. See *Bouldin v. Alexander,* 15 Wall. 131 (1872). Furthermore, the majority faction generally can be identified without resolving any question of religious doctrine or polity. . . ." App. 349.

Responding to the mandate of this Court, the Supreme Court of Georgia expressly held that:

"Georgia has adopted for use in church local schism cases a 'presumptive rule of majority representation, defeasible upon a showing that the identity of the local church is to be determined by some other means.' *Jones v. Wolf, supra,* 47 L.W. at 4965. That presumption is overcome under Georgia law by an application of what has come to be known as 'neutral principles' of law—that is 'state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denominations.'" *Id.* at 50a.[1]

1. Petitioners argue at page 10 of their brief that this holding was erroneous and in defiance of the mandate of this Court because different principles apply when the dispute is between two local factions rather than the parent church and a local congregation. Nothing could be further from the case. In Part IV of its opinion dealing with disputes in a divided congregation this Court specifically held that the same neutral principles are involved: "Most importantly, any rule of majority representation can always be overcome, under the neutral principles approach, either by providing, in the corporate charter or the constitution of the general church, that the identity of the local church is to be established in some other way, or by providing that the church property be held in trust for the general church and those who remain loyal to it." App. 34a.

The Georgia Supreme Court reviewed *Ga. Code Ann.* §§22-5504,[2] 22-5507,[3] and 22-5508,[4] because this Court had expressed uncertainty as to whether these provisions involved impermissible considerations of religious doctrine and polity. The Georgia Supreme Court expressly held that §22-5504 is applicable only to churches having a congregational form of government and thus was inapplicable to the instant case. With respect to §§22-5507 and 22-5508, the Court stated:

2. 22-5504 Majority represent church Withdrawal by part of congregation

The majority of those who adhere to its organization and doctrines represent the church. The withdrawal by one part of a congregation from the original body, or uniting with another church or denomination, is a relinquishment of all rights in the church abandoned.

(Acts 1968, pp. 565, 822)

3. 22-5507 Conveyances to churches or religious societies confirmed

All deeds of conveyance heretofore made, and which may hereafter be made, to any person or persons, for any lots of land within this State, to any church or religious society, or to trustees for the use of such church or religious society, for the purpose of erecting churches or meeting houses, are, and shall be deemed and taken to be, good and valid, and available in law for the intents, uses, and purposes contained in said deeds of conveyance; and all lots of land so conveyed shall be fully and absolutely vested in such church or religious society, or in their respective trustees, for the uses and purposes in said deed expressed; to be holden to them, or their trustees, for their use by succession, according to the mode of church government or rules of discipline exercised by such churches or religious societies respectively.

(Acts 1968, pp. 565, 822)

4. 22-5508 Trustees in conveyances, to what authority subject

All trustees to whom conveyances are or shall be made, for the purposes expressed in the preceding section, shall be subject to the authority of the church or religious society for which they hold the same in trust, and may be expelled from said trust by such church or society, according to the form of government or rules of discipline by which they may be governed.

(Acts 1968, pp. 565, 823)

"In applying Code Ann. §§22-5507 and 5508 to the present litigation, this court is not concerned with the procedure by which factions within the local church and the national church decide which persons are 'true believers' or 'adherents to the true faith'. Rather, church documents will be considered only insofar as they determine or assist in the determination of the persons who are 'entitled to possess and enjoy the property located at 2193 Vineville Avenue in Macon, Ga.' *Jones v. Wolf*, 47 L.W. 4962, at 4963. Stated otherwise, the only question for the courts is 'which of the factions within the local congregation has the right to control the actions of the titleholder, and thereby to control the use of the property. . . .' *Jones v. Wolf, supra* at 4966. The church documents in the present case speak to resolution of doctrinal disputes. They are silent as to which persons have the right to enjoy and to use the property in the event of a schism at the local level." *Id.* at 51a-52a.[5]

The Supreme Court of Georgia affirmed the decision of the trial court and entered judgment on September 27, 1979. Petitioners failed to file a motion for a rehearing pursuant to Rule 47[6] of the Rules of the Supreme Court of Georgia.

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5. This ruling is likewise in complete accord with the opinion of this Court: "In undertaking such an examination [of church constitutions], a civil court must take special care to scrutinize the document in purely secular terms, and not to rely on religious precepts in determining whether the document indicates that the parties have intended to create a trust." App. 30a.

6. "Motions for rehearing shall be filed within 10 days from the date of decision. A copy of the opinion shall be attached."

REASONS FOR DENYING THE WRIT

I. Consistent With the Mandate of This Court, the Georgia Supreme Court Validly Adopted a Presumptive Rule of Majority Representation Which Is Defeasible Upon a Showing That the Identity of the Local Church Is to Be Established by Other Means

The Georgia Supreme Court has clearly and unequivocally adopted a presumptive rule of majority representation for use in disputes between factions of a local church. The Court further held that the presumption may be overcome under Georgia law by the application of neutral principles - i.e. state statutes, corporate charters, relevant deeds, and the organizational constitution of the denomination. Thus, the Georgia Supreme Court clearly complied with the mandate of this Court to articulate the basis of its prior decision.

Contrary to petitioners' assertions, Georgia courts have long recognized a presumption of majority representation in all church property disputes. The Georgia courts have recognized two types of church government—congregational and hierarchical. As the Supreme Court noted in *Crumbley v. Solomon*, 243 Ga. 343, 254 S.E.2d 330 (1979):

> "If the church government is congregational, then a majority of its members control its decisions and local church property. If hierarchical, then we use 'neutral principles of law' to determine whether the local church or parent church has the right to control local property. Those 'neutral principles' are state statutes, corporate charters, relevant deeds, and the organizational constitutions of the denomination." 243 Ga. at 343.

Under Georgia law, both forms of church government employ majority rule in the absence of an express indication to the contrary. With respect to congregational churches, the concept of majority representation is embodied in *Ga. Code Ann.* §22-5504. Notwithstanding petitioners' protestations to the contrary, the Georgia Supreme Court expressly held that §22-5504 pertains only to churches having a congregational form of government and thus was inapplicable to the instant case. This definitive interpretation of Georgia law is controlling and is not cognizable in a petition for a writ of certiorari. Petitioners' assertions that §22-5504 is applicable to the instant case and effects a violation of the First Amendment is without merit.

With respect to hierarchical churches such as PCUS, Georgia has adopted a presumption of majority representation which is defeasible if a neutral principles of law analysis indicates otherwise. A denomination may employ reversionary clauses, trust provisions, constitutional provisions, or similar techniques to lodge ultimate control over the use and possession of local church property in the denomination or its designee. This Court expressly sanctioned such measures for ensuring that a dispute over the ownership of local church property will be resolved in accordance with the desires of the general church. App. at 30a.

In the instant case, the Georgia courts examined the applicable deeds, the VPC charter, Georgia statutes and the PCUS *Book of Church Order*. As this Court noted, the PCUS *Book of Church Order* "failed to reveal any language of trust in favor of the general church." *Id.* at 28a. Likewise, the Georgia courts concluded that neither PCUS nor the local congregation employed a trust clause or any other technique to establish ultimate control in

the so-called loyal faction of the local congregation so as to constitute a defeasance of the presumption of local church majority rule. Finding no basis to overcome presumption of majority representation and that the trial court had properly applied the neutral principles approach of *Carnes v. Smith*, 236 Ga. 30, 222 S.E.2d 322, *cert. denied*, 429 U.S. 868 (1976), the Georgia Supreme Court held that petitioners were not entitled to the relief requested.

Georgia law prescribes the methods whereby a minority faction in a local church property dispute may overcome the presumptive rule of majority representation. In *Crumbley v. Solomon, supra,* which was decided after the initial Georgia Supreme Court opinion in this case, the minority faction of a local hierarchical church was able to overcome the presumption of majority rule. Upon a review of state statutes, relevant deeds, corporate charters, and the organizational constitution of the denomination, the Georgia Supreme Court found that there was a clause for the benefit of the general church in its discipline which provided that "the Association shall hold all property, regardless if all members vote to change the church to some other faith." 243 Ga. at 345, 254 S.E.2d at 332.

Unlike the general church involved in *Crumbley,* PCUS in the instant case failed to adopt any measures to ensure control over local church property either directly or by recognizing a local faction as being entitled to possession. To the contrary, the PCUS *Book of Church Order* provides that the trustees of a local church shall hold, sell, mortgage, and otherwise deal with church property *solely* at the direction of the local church congregation. J.A. 35. PCUS thus has a policy of local control which can be ascertained from its constitution under the neutral principles analysis without engaging in a searching and impermissible inquiry into church polity.

Accordingly, the Georgia Supreme Court properly adopted a presumptive rule of majority representation which is fully consistent with the mandate of this Court.

II. The Opinion of the Supreme Court of Georgia Is a Definitive Statement of the Law of Georgia and Conclusively Binds the Parties

The Georgia Supreme Court opinion that is attacked by the petition was a definitive statement of Georgia law. With only one dissent, it was held that Georgia has adopted a presumptive rule of majority representation which may be overcome by the application of "neutral principles" of law.

Petitioners make the hypertechnical assertion that the opinion of the Georgia Supreme Court was "no ruling at all." This contention is unsound and constitutes no justification for the grant of certiorari.

The expression "no ruling at all" is taken from *Grantham Transfer Co., Inc. v. Hawes,* 225 Ga. 436, 169 S.E.2d 290 (1969). In referring to an earlier opinion of the Court of Appeals of Georgia affirming the denial of a motion for summary judgment in the same case,[7] it was stated:

> "But since that judgment was affirmed in *Undercofler v. Grantham* . . . in which only three of the five concurring judges held that there was an issue of fact, it might be said that such a statement in that opinion gives the grounds upon which this part of the judgment was based and it thereby became the law of the case to the effect that an issue of fact is made by this record which is, in substance, the same

7. *Undercofler v. Grantham,* 114 Ga. App. 868, 152 S.E.2d 900 (1966).

> as that there considered. This cannot be true, as only five of the nine judges in that court concurred in the judgment of affirmance with two of these concurring in the judgment only. Four dissented. This renders the entire opinion not a ruling by the court but merely the view of only three judges, which is no ruling at all, and hence it cannot constitute the law of the case. See *Southern R. Co. v. Parker,* 194 Ga. 94, 102 (21 S.E.2d 94); *Smith v. State,* 196 Ga. 595, 602 (27 S.E.2d 369); and *McCurry v. McCurry,* 233 Ga. 334 (155 S.E.2d 378), which hold that minority opinions are not binding, although the judgments were concurred in by a majority of the court. We therefore put those judgments aside as having no relevancy to the issues in this case." 225 Ga. at 439, 169 S.E.2d at 293.

None of the cases cited in the above quotation dealt with the effect on the "law of the case" of prior opinions which contained concurrences in the judgment only. Instead, all three discussed the non-binding effect of such opinions in light of the former Georgia "full bench rule." This rule resulted from an 1896 Act of the Georgia General Assembly and is codified in *Ga. Code Ann.* §6-1611, which read in pertinent part as follows:

> "Unanimous decisions rendered . . . by a full bench of six shall not be overruled or materially modified except with the concurrence of six Justices, and then after argument had, in which the decision, by permission of the court, is expressly questioned and reviewed; and after such argument the court in its decision shall state distinctly whether it affirms, reverses, or changes such decision."

The "full bench rule" has now been discarded by the Georgia Supreme Court. Because of the adoption of

a new Georgia Constitution in 1945, it was relegated to being a mere "policy" in *Ward v. Big Apple Super Markets of Bolton Road, Inc.*, 223 Ga. 756, 158 S.E.2d 396 (1967); and in *Hall v. Hopper*, 234 Ga. 625, 216 S.E.2d 839 (1975) the Court declared that the rule had been repealed.

The decision of the Georgia Supreme Court represents a *holding* by all but one member of the Court that Georgia has adopted a presumptive rule of majority representation and that the presumption may be overcome by the application of neutral principles of law. The fact that four of the six justices concurred in the judgment only does not detract in the slightest from this holding. The judgment of the Supreme Court of Georgia was rendered in direct response to this Court's mandate. It was a complete and final resolution of the controversy under Georgia law, and it is binding upon the parties.

Petitioners failed to file a motion for rehearing in the Supreme Court of Georgia although they had the right to do so. They could have contended that the holding was "no ruling at all" and requested a clarification from the Supreme Court of Georgia, but they did not do so. They could have contended in a motion for rehearing that the Georgia Supreme Court had failed to comply with the mandate of this Court, but they did not do so. Their argument that the Supreme Court of Georgia's decision "flouts" the mandate is specious, is a totally unjustified slur, and should be rejected.

III. The Neutral Principles Approach Applied in This Case Does Not Establish Religion, Interfere With Its Free Exercise or Deny Equal Protection

Petitioners' contention that the decision of the Georgia Supreme Court violates the free exercise and establishment clauses as well as the equal protection clause is

without merit. While the holding of the Georgia court will require some changes at either the local or denominational level in order to reach a contrary result in future cases arising in Georgia, there is absolutely no basis for their argument that the presbyterian form of government is placed in jeopardy or that persons are being forced to adopt views they deem to be abhorrent.[8]

The largest presbyterian denomination in the United States is the United Presbyterian Church in the United States of America (UPCUSA). Its *Book of Order* has long contained provisions which are sufficient under the neutral principles approach to place ultimate authority over local property in the denomination. For example, Section 62.08[9] states that local trustees can deal with the property of a local church only as directed by the *session* instead of "solely under the instructions of the congregation which they serve", as PCUS provides. J.A. 35. Section 62.12[10] prohibits a local church from selling, mortgaging or encumbering its property without written per-

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8. It is indeed ironic that Petitioners are even advancing such an argument on behalf of PCUS. They have consistently noted throughout this litigation that only the local faction of the church to which they adhere (the minority) is a party to this litigation and that PCUS is not a party and is not seeking to take possession of the property of the local church. Brief for Petitioners, No. 78-91, p. 33.

9. "62.08 8. Whether by civil law the trustees of a particular church hold title to its property or are the officers of a corporation which holds title thereto, they shall deal with such property only as they may be authorized or directed by the session, and their authority in respect to the selling, mortgaging, and leasing of real property shall be subject also to any rights reserved to the congregation by civil law or the bylaws of the particular church and to the permission of presbytery as herein provided." J.A. 333.

10. "62.12 12. A particular church shall not sell, mortgage or otherwise encumber any of its real property and it shall not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the particular church." J.A. 334.

mission from the presbytery. These provisions have been relied upon by courts in litigation involving that denomination to conclude that ultimate control over local church property resides in the denomination or its delegate. See *Lowe v. First Presbyterian Church of Forest Park*, 308 N.E.2d 801 (Ill. 1974).[11]

The fact that the UPCUSA has chosen to include these neutral, secular provisions in its constitution to ensure that it gets the result sought here by PCUS in nowise constitutes an abrogation of the presbyterian form of government. Were PCUS to adopt similar provisions,[12] the Georgia courts would undoubtedly find under *Crumbley* and this case that a neutral principle existed which has the effect of overcoming the presumption of majority representation.

Petitioners' argument about being denied equal protection is equally specious. *Ga. Code Ann.* §22-5504 applies only to local congregations in congregational denominations. App. 51a. The majority of the membership do in fact represent the church and control its property. Those who withdraw (the minority)[13] relinquish their rights

11. This case also followed the deference rule applied in *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1871).

12. Since this controversy arose, PCUS has amended its *Book of Church Order* to provide that a local church can withdraw only by constitutional action on the part of a presbytery. J.A. 329. It has not adopted any specific provisions dealing with property similar to those cited in footnotes 9 and 10, *supra*.

13. "When a section of the Code has been codified from a decision of this Court, it will be construed in the light of the source from which it came, unless the language of the section imperatively demands a different construction." *Sinclair v. Friedlander*, 197 Ga. 797, 798, 30 S.E.2d 398, 399 (1944). *Ga. Code Ann.* §22-5504 was codified from the decision in *Bates v. Houston*, 66 Ga. 198 (1880). Those "persons who withdrew" were the minority faction of a congregational church that had left the old church organization and forceably taken possession of the church sanctuary.

in it. This is a perfectly reasonable and logical way for civil courts to deal with disputes in congregational churches. The fact that this Code Section does not apply to Petitioners clearly does not abridge equal protection.

CONCLUSION

The most recent decision of the Georgia Supreme Court in this litigation is in complete conformity with the opinion and mandate of this Court. There is no conflict with that decision or any other opinion of this Court and the writ should therefore be denied.

Respectfully submitted,

FRANK C. JONES
2500 Trust Company Tower
Atlanta, Georgia 30303

WALLACE MILLER, JR.
W. WARREN PLOWDEN, JR.
500 First National Bank Building
Macon, Georgia 31201

EDWARD S. SELL, JR.
1414 Georgia Power Building
P. O. Box 1014
Macon, Georgia 31201

Attorneys for Respondents